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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,486	11/29/2000	Takehiro Yatomi	1110-0280P	1332

2292 7590 01/28/2003

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EXAMINER	
LUCAS, ZACHARIAH	

ART UNIT	PAPER NUMBER
1648	12

DATE MAILED: 01/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.

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Commissioner of Patents and Trademarks

Advisory Action	Application No. 09/701,486	Applicant(s) YATOMI, TAKEHIRO	
	Examiner Zachariah Lucas	Art Unit 1648	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 December 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1 17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☒ The proposed amendment(s) will not be entered because:

   (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: *See Continuation Sheet*.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☐ The a)☐ affidavit, b)☐ exhibit, or c)☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☒ will not be entered or b)☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: None

   Claim(s) objected to: None

   Claim(s) rejected: *1,3 and 5-7*.

   Claim(s) withdrawn from consideration: *4*.

8. ☐ The proposed drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☒ Other: *See Continuation Sheet*

Continuation of 2. NOTE: The proposed amended claim inserts the further limitation of requiring that the Fas antagonist "supresses apoptosis.' This additional limitation requires further examination and a new search. .

Continuation of 10. Other: Although the examiner will not address those issues relating to the addition of the "suppresses apoptosis" limitation to the claim or to issues adequately addressed in prior actions, those other issues raised by the applicant will be discussed. The applicant traverses the rejection of claims 1, 6, and 7 as anticiapted by Wallach et al., U.S. Patent 6,399,327 on the grounds that the patent does not teach Fas-Fas ligand binding. Although the amendment inserting the language relied upon in the traversal has not been entered, the examiner does not believe that this language distinguishes from Wallach. Wallach teaches proteins or antibodies that can inhibit binding between the intracellular domain of the Fas receptor and a ligand to that domain, the MORT1 binding protien. Thus, the patent teaches a method of inhibiting apoptosis through the inhibition of binding between the FAs receptor and an intracellular Fas ligand. As the claims do not distinguish between intra- and extra-cellular Fas-Fas ligand interactions, the applicants argument would not be found persuasive even had the proposed amendment been entered.

The applicant also argues that the Elliot et al. reference teaches away from the involvement of Fas pathway in MS. The examiner does ot agree. Although the reference teaches that EAE was present in both normal and Fas defiicient mice, the reference also teaches that in the normal mice, Fas induced apoptosis is involved and a target for amelioration of EAE in normal mice. Page 1609, right column. The reference also teaches that the fact that Fas-deficient mice also suffer EAE is evidence that other, non-Fas, pathways may be involved. Thus, the refernece does not teach that the Fas-pathway is not invoived in MS so much as it teaches that there are likely to be other pathways also involved.

The examiner also disagrees with the applicant's statement that the other references cited by the examiner also teach away from using Fas-antagonists for the reasons of record and for the reasons above regarding Wallach. with respsect to D'Souza, the examiner disagrees with the applicants conclusion that the reference teaches away from the involvemnt of Fas-Fas ligand interactions in MS. As explained in the prior action, D'Souza does not teach away from such involvment. Rather, it teaches that the mode of involvment of the pathway may be other than by causing apoptosis. This does not teach away from the claimed method. It merely teaches that inhibiting the Fas pathway may be useful in treating MS for reasons other than by inhibiting apoptosis. However, the basic connetion between MS and the Fas-pathway is supported by the reference.

As the amendments to the claims have not been entered, the applicants arguments regarding Keana are found moot. As noted in the prior actiuon, Holoshitz is not relied on for the method taught therein for treating RA, but for the explanation of the Fas apoptosis pathway.

James C. Housel

JAMES HOUSEL 1/27/03
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